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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
JACOBSON, MICHELE LYNN				
ART UNIT		PAPER NUMBER		
1782				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/588,477

**Applicant(s)**

FOEGLER ET AL.

**Examiner**

Michele L. Jacobson

**Art Unit**

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 September 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 1-4, 7-16, 18-20, 22-24, 26, 28 and 29 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 1-4, 7-16, 18-20, 22-24, 26, 28 and 29 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-893)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Examiner Notes***

1. Any objections and/or rejections made in the previous action, and not repeated below, are hereby withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-11, 15, 16, 18, 19, 22-24, 26, 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barmore et al. U.S. Patent Application Publication No. 2001/0008658 (hereafter referred to as Barmore) and Mintz et al. U.S. Patent No. 5,413,148 (hereafter referred to as Mintz).
4. Barmore teaches a packaging film comprising a first thermoplastic substrate layer which can be coated with a second edible film layer which is transferred to a product during cooking comprising a binder, an additive and a crosslinking agent. (Para.

8, 11) The edible film is adhered to the meat product such that upon removing the packaging film from the meat product, the edible film layer remains adhered to the meat product. (Para. 33) The binder and the crosslinking agent provide cohesion of the coating. (Para. 196) Additionally, the nature of the binder along with the crosslinking agent is believed to control the rate of hydration of the coating allowing the coating to remain intact against the flow of high moisture meat product. (Para. 196)

5. The additive may comprise caramel, natural colorant, spice or citrate. (Para. 12) The binder may comprise a first binder including alginate, methyl cellulose and hydroxypropyl starch and a second binder comprising materials including proteins such as albumin, zein, carageenan, casein, soy protein or wheat protein. (Para. 16)

6. The packaging film preferably further comprises a third layer between the first and second layer comprising materials such as alginate and hydroxypropyl starch to serve as a release layer. (Para. 23) The packaging film of the invention is also recited to comprise a layer which serves as a barrier to oxygen. (Para. 28) The laminate of the invention is recited to be useful for production of casings such as fin-sealed, lap-sealed and butt-sealed casings for meat products. (Col. 32)

7. The casing of Barmore may also comprise an inner barrier layer in addition to the substrate layer. (Para. 27,18)

8. The multilayer film of Barmore may be produced by coating a surface of a substrate film with the film forming coating composition, drying the composition to form a first film layer followed by forming the substrate film into a tubular article by sealing the

edges of the substrate film by methods including employing butt seal tape as an adhesive. (Para. 31, 32, 126)

9. Barmore is silent regarding employing a knitted or woven textile layer in the casing disclosed.

10. Mintz teaches that it was well known in the meat casing arts to encase tubular meat products in netting in order to form a desirable checkerboard pattern on the surface of the meat product. (Col. 1, lines 20-36) These netting materials may be made of cotton or polymers such as polyester and nylon and can be woven or knit. (Col. 1, lines 23-26, Col. 3, lines 40-42) Mintz also teaches that collagen is a well known protein for forming films to produce sausage casings. (Col. 1, lines 50-64)

11. Both Barmore and Mintz are directed towards meat casings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a woven or knitted netting around the meat casing of Barmore in order to impart a checkerboard pattern to the surface of the meat product of Barmore since this pattern was known in the art to be aesthetically pleasing.

12. Regarding claims 1-4, 8-11, 15 and 16: The coating material of Barmore is the same as that claimed in claims 1-4 and 16. The obvious modification of Barmore with Mintz to provide an advantageous improvement in the aesthetic qualities of the casing of Barmore would have produced the same invention as claimed in claims 1-4, 8-11, 15 and 16.

13. Regarding claims 7, 18 and 19: The common netting material disclosed by Mintz is woven or knitted and comprised of natural fibers such as cotton or synthetic fibers

such as polyester or polyamide. The obvious use of such a netting material in the invention of Barmore would have produced the same invention as claimed in claims 7, 18 and 19.

14. Regarding claim 22: Mintz evidences that collagen was well known in the art for forming protein films to be employed in meat casings. Barmore recites several protein materials for the casing disclosed but is silent regarding collagen. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have employed collagen as the protein in the transfer coating film of Barmore since collagen was a well known protein for forming meat casing films as evidenced by Mintz. The selection of a known material based on its suitability for its intended use supports a *prima facie* obviousness determination. ("Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig-saw puzzle." *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious)) (MPEP 2144.07)

15. Regarding claims 23, 24 and 26: Barmore clearly recites employing a third layer between the edible layer and thermoplastic layer. This third layer of Barmore is not disclosed to include crosslinking agent and would therefore be water soluble since it is disclosed to comprise water soluble materials such as alginate and hydroxypropyl starch. The obvious modification of the embodiment of Barmore comprising this third

layer with Mintz would have produced the same invention claimed in claims 23, 24 and 26.

16. Regarding claim 28: Although Barmore does not disclose that the coating is rendered insoluble via treatment with smoke and/or by warming or heating, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113. In the instant case, the coating of Barmore is insoluble and even though produced by a different process, the invention of Barmore as modified by Mintz reads on the invention claimed in claim 28.

17. Regarding claim 29: The coating of Barmore is intended to be present in the casing prior to stuffing with meat product and is comprised of the same materials claimed and disclosed by applicant. Therefore, it naturally flows that the coating of Barmore meets the limitations of claim 29.

18. Claims 1-4, 7-16, 18-20, 23, 24, 26, 28 and 29 are rejected under 35 U.S.C.

103(a) as being unpatentable over Barmore et al. U.S. Patent Application Publication No. 2001/0008658 (hereafter referred to as Barmore) and Ito et al. U.S. Patent No. 5,705,214 (hereafter referred to as Ito)

19. Barmore teaches what has been recited above but is silent regarding employing a woven or knitted textile layer.

20. Ito teaches a food component transfer sheet for forming a food casing comprising a water and heat resistant base sheet, a layer comprising granules, powders and/or chips of a food component to be transferred and a glue layer formed from an edible water soluble material between the base sheet and food component layer. (Col. 2, lines 5-22) The base sheet of the casing of Ito may be a sheet of woven or knitted fabric made from natural fibers such as plant fibers, animal fibers, cellulose acetate or synthetic fibers such as polyester or nylon. (Col. 3, lines 14-28)

21. Both Barmore and Ito are directed towards food casings having a food transfer component. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a woven or knitted substrate layer in the invention of Barmore since these types of substrate layers were known in the art to be suitable for food casings having food transfer layers. The selection of a known material based on its suitability for its intended use supports a *prima facie* obviousness determination. ("Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig-saw puzzle." *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S.



327, 65 USPQ 297 (1945) See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960) (selection of a known plastic to make a container of a type made of plastics prior to the invention was held to be obvious)) (MPEP 2144.07)

22. Regarding claims 1-4, 7-13, 15, 16 and 18-20: The coating material of Barmore is the same as that claimed in claims 1-4 and 16. The obvious selection of a cellulose, polyester or nylon knitted or woven substrate layer for the food casing of Barmore would have produced the same invention as claimed in claims 1-4, 7-11, 15, 16, 18 and 19 formed by the same method claimed in claims 12, 13 and 20.

23. Regarding claim 14: The casing of Barmore may comprise an inner barrier layer in addition to the substrate layer. Therefore, the obvious modification of Barmore with Ito would have produced the same invention as claimed in claim 14.

24. Regarding claims 23, 24 and 26: Barmore clearly recites employing a third layer between the edible layer and thermoplastic layer. This third layer of Barmore is not disclosed to include crosslinking agent and would therefore be water soluble since it is disclosed to comprise water soluble materials such as alginate and hydroxypropyl starch. The obvious modification of the embodiment of Barmore comprising this third layer with the teachings of Ito would have produced the same invention claimed in claims 23, 24 and 26.

25. Regarding claim 28: Although Barmore does not disclose that the coating is rendered insoluble via treatment with smoke and/or by warming or heating, it is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of

a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113. In the instant case, the coating of Barmore is insoluble and even though it is produced by a different process, the invention of Barmore as modified by Ito reads on the invention claimed in claim 28.

26. Regarding claim 29: The coating of Barmore is intended to be present in the casing prior to stuffing with meat product and is comprised of the same materials claimed and disclosed by applicant. Therefore, it naturally flows that the coating of Barmore meets the limitations of claim 29.

### ***Response to Arguments***

27. Applicant's arguments with respect to claims 1-4, 7-16, 18-20, 22-24, 26, 28 and 29 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele L. Jacobson whose telephone number is (571)272-8905. The examiner can normally be reached on Monday-Thursday 8:30 AM-6 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michele L Jacobson/  
Examiner, Art Unit 1782

Michele L Jacobson  
Examiner  
Art Unit 1782